

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:06CV319**

**JUDY HATTEN, individually, and  
JUDY HATTEN as Administrator of  
the Estate of Ormon Hatten,  
deceased,**

**Plaintiff,**

**Vs.**

**GEORGE MICHAEL HATTEN, and  
LIBERTY LIFE ASSURANCE  
COMPANY OF BOSTON, by and  
through the North Carolina  
Department of Insurance,**

**Defendants.**

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**ORDER OF DISMISSAL**

**THIS MATTER** is before the Court on the Magistrate Judge's  
Memorandum and Recommendation, filed November 6, 2006.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of  
Designation of this Court, United States Magistrate Judge Dennis L.  
Howell, was designated to consider pending motions in the captioned civil  
action and to submit to this Court recommendations for the disposition of  
these motions.

The Memorandum and Recommendation contains proposed findings of fact and conclusions of law in support of a recommendation regarding the Defendant Liberty Life Assurance Company's<sup>1</sup> motion to dismiss with leave to file an amended complaint. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on November 27, 2006. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant Liberty Life's motion to dismiss be allowed.

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<sup>1</sup> In its motion, the Defendant Liberty Life states that it is incorrectly identified in the complaint filed in this action. The case caption has been corrected on this Order to reflect the correct name of the Defendant insurance company.

**IT IS, THEREFORE, ORDERED** that the motion of Defendant Liberty Life Assurance Company of Boston to dismiss be **ALLOWED**, and Plaintiff's claims against this Defendant are hereby **DISMISSED**.

**IT IS FURTHER ORDERED** that the Defendant's alternative motion to allow the Plaintiff to file an amended complaint is **DENIED**.

**IT IS FURTHER ORDERED** that the Court declines to exercise supplemental jurisdiction over the Plaintiff's remaining state claims regarding the Defendant George Hatten and such claims are hereby **REMANDED** to the General Court of Justice, District Court Division, of Transylvania County, North Carolina.

Signed: December 2, 2006



Lacy H. Thornburg  
United States District Judge

